

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION**

**ROBISON TIRE COMPANY, INC.**

**PLAINTIFF**

**VS.**

**CIVIL ACTION NO. 2:18-cv-208-KS-MTP**

**PTW OF MISSISSIPPI, INC.**

**d/b/a PERFORMANCE TIRE & WHEEL**

**DEFENDANT**

**COMPLAINT**

COMES NOW Robison Tire Company, Inc. (“Robison”) and files this Complaint against Defendant, PTW of Mississippi, Inc. d/b/a Performance Tire & Wheel (“PTW”), and in support thereof, would show unto the Court the following:

**PARTIES**

1. Robison is a Mississippi Corporation with its principal place of business being located in Jones County, Mississippi.

2. PTW is a corporation organized under the laws of the State of Mississippi with its principal place of business being located in Harrison County, Mississippi, it may be served with process by serving a Summons and a Copy of this Complaint upon its registered agent, Darrin Mauffray, 12101 Highway 49, Gulfport, Mississippi 39503.

**JURISDICTION AND VENUE**

3. This Court has Subject Matter Jurisdiction pursuant to 28 U.S.C. § 1334(b). On July 14, 2016, Robison filed a Voluntary Petition for Relief under Chapter 11 of the *United States Bankruptcy Code*. This lawsuit is an attempt to collect on debts owed to Robison in order to fund its Chapter 11 Plan of Reorganization and is therefore related to a case under title 11, United States Code.

4. Venue is proper in this judicial district as the pending Chapter 11 case in which Robison is the debtor is before the United States Bankruptcy Court for the Southern District of Mississippi as well as the fact that a substantial part of the events giving rise to Robison's claims occurred in this judicial district.

### **FACTS**

5. On September 10, 2014, Melissa Mauffray executed a Credit Application and Agreement (the "Agreement") with Robison on behalf of PTW as its director, secretary and treasurer in order to obtain an open account with Robison for the purchase of tires. A true and correct copy of the Credit Application and Agreement is attached hereto as Exhibit "A."

6. Following the execution of the Agreement, PTW purchased tires and other associated goods from Robison under the Agreement from March 18, 2015 through May 4, 2015.

7. To date, PTW owes a balance of \$14,537.77 on its open account with Robison. A true and correct itemization of the balance due is attached hereto as Exhibit "B."

8. On April 11, 2016, counsel for Robison sent a letter to PTW demanding payment on Robison's open account including the itemized statement attached as Exhibit "B." A true and correct copy of the letter is attached hereto as Exhibit "C."

9. The Agreement also provides that 2FSC and Knight shall be responsible for "33.33% of the outstanding balance that is then due . . . and all costs of collection" in the event the account is placed with an attorney.

### **COUNT I: OPEN ACCOUNT**

10. Robison incorporates the allegations contained in paragraphs 1 through 9 into Count I of this Complaint.

11. PTW has an open account with Robison under which \$14,537.77 is due that has not

been paid.

12. PTW is liable to Robison under its open account in the amount of \$14,537.77 itemized in Exhibit "B" attached hereto as well as attorneys fees in the amount of \$4,845.92 plus costs of collection pursuant to the terms of the Agreement and Miss. Code Ann. § 11-53-81.

**WHEREFORE, PREMISES CONSIDERED,** Robison Tire Company, Inc. requests that this Honorable Court enter a monetary judgment against PTW of Mississippi, Inc., in favor of Robison Tire Company, Inc. in the principal amount of \$14,537.77, plus attorneys fees in the amount of \$4,845.92, plus all costs of court and for all other relief to which it is entitled given the premises.

Respectfully submitted,

**ROBISON TIRE COMPANY, INC.**

By: 

W. Jarrett Little, Its Attorney

OF COUNSEL:

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